

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 22, 2014

SENATE BILL

No. 1249

Introduced by Senator Hill

February 20, 2014

An act to add Sections 25150.9, 25150.9.1, and 25150.9.2 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, as amended, Hill. Hazardous waste: shredder waste.

(1) The California Integrated Waste Management Act of 1989 requires materials that require special handling, as defined, to be removed from major appliances and vehicles in which they are contained before crushing for transport or transferring to a baler or shredder for recycling.

The hazardous waste control laws prohibit a person who is not a certified appliance recycler from removing materials that require special handling from major appliances and imposes specified requirements regarding transporting, delivering, or selling discarded major appliances to a scrap recycling facility. A violation of the hazardous waste control laws is a crime.

This bill would authorize, until January 1, 2017, the Department of Toxic Substances Control, in consultation with the Department of Resources Recycling and ~~Recovery~~ and *Recovery*, the State Water Resources Control Board, *and affected local air quality management districts*, to adopt regulations establishing alternative management standards for a metal shredding facility, ~~including activities conducted~~

~~within the boundaries of a metal shredding facility, and for the generation, storage, transportation, and disposal of metal shredder residue and treated metal shredder residue, as defined, for hazardous waste management activities within the jurisdiction of the Department of Toxic Substances Control, that would apply in lieu of the hazardous waste management standards if the department performs specified actions. The bill would include among those department actions preparing a preliminary analysis and a final analysis evaluating the hazardous waste management activities to which the *alternative* management standards would apply. The bill would require the department to provide notice that it proposes to adopt alternative management standards. The bill would prohibit the department from adopting *alternative* management standards that are less stringent than applicable standards under federal law and would require ~~metal shredder residue and treated metal shredder residue waste~~ to be disposed of in a specified manner. The bill would require the department to complete the analysis of the hazardous waste management activities and the subsequent regulatory action before January 1, 2017, and would make all hazardous waste determinations and policies, procedures, or guidance issued by the department before January 1, 2014, relating to metal shredder ~~residue waste~~ or treated metal shredder ~~residue waste~~ inoperative once the department has taken regulatory action. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.~~

The bill would authorize the department to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs of the department to implement these provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) Before 1984, all metal shredder waste was considered not
2 to be hazardous waste and was disposed of or used as alternative
3 daily cover in municipal solid waste landfills.

4 (b) In 1984, California deemed metal shredder waste as a
5 non-RCRA hazardous waste, or California hazardous waste, due
6 to the presence of lead, cadmium, copper, and zinc at levels above
7 the state's regulatory thresholds, as well as polychlorinated
8 biphenyls in concentrations that, on some occasions, exceeded
9 either the federal or the California regulatory thresholds, or both.

10 (c) Between 1986 and 1992, the Toxic Substances Control
11 Division of the Department of Health Services, which was the
12 predecessor to the Department of Toxic Substances Control
13 (DTSC), issued conditional nonhazardous waste classifications,
14 also referred to as "f letters," to seven shredder facilities in
15 California that treated their metal shredder waste to affix the
16 hazardous components into waste. Once a facility operator
17 received a nonhazardous waste classification, treated metal
18 shredder waste was no longer regulated as a hazardous waste at
19 the facility.

20 (d) In early 2001, DTSC began an initiative to evaluate the
21 adequacy of the metal shredder waste policy and compliance with
22 the conditional nonhazardous waste classifications, which included
23 new sampling and analysis. The report from that initiative
24 recommended rescinding the conditional nonhazardous waste
25 classifications. However, DTSC took no further action.

26 (e) In 2002, DTSC conducted an auto shredder initiative that
27 found that both treated and untreated shredder waste exceeded
28 state regulatory thresholds for lead, zinc, and cadmium. The report
29 recommended that the DTSC policy and procedure that allowed
30 the exemption for this waste be rescinded and that the waste stream
31 be regulated as hazardous waste. No action was taken at that time.

32 (f) In 2002, DTSC issued an "imminent and substantial
33 endangerment" order against Pacific Steel Inc., because of dust
34 that blew from contaminated piles of waste stored by Pacific Steel
35 Inc. out in the open. The contaminated piles, which contained
36 polychlorinated biphenyls and toxic metals such as lead, zinc, and
37 copper, polluted and threatened to pollute the air and water near
38 the facility. In 2011, DTSC issued a remedial action order against
39 Pacific Steel Inc. to clean up the site.

1 (g) In 2008, DTSC sent letters to operators of metal shredder
2 facilities expressing the department's intention to repeal the
3 conditional authorization that allows metal shredder waste to be
4 classified as a nonhazardous waste. However, DTSC has not, to
5 date, rescinded the conditional waste classifications.

6 (h) In 2009, the California Integrated Waste Management
7 Board, now known as the Department of Resources Recycling and
8 Recovery, or CalRecycle, issued the "Alternative Daily Cover
9 White Paper." The paper states that, "[s]taff with DTSC have
10 indicated that [metal shredder waste] treatment is not effective,
11 the material should be considered hazardous, and [metal shredder
12 waste] should be required to be disposed [of] in Class I landfills.
13 DTSC staff also indicates that [metal shredder waste] feedstocks
14 are variable and have changed in the last 20 years (more electronic
15 components, white goods, chlorinated plastics). Sampling is costly,
16 and it is difficult to obtain representative samples of [metal
17 shredder waste]."

18 (i) In 2011, DTSC settled an enforcement action against SA
19 Recycling, LLC, which is jointly owned by Sims Metal Management
20 Ltd. and Adams Steel LLC, for \$2.9 million. The action alleged
21 that SA Recycling, LLC violated air pollution laws when an
22 explosion at its Port of Los Angeles metal shredding facility at
23 Terminal Island destroyed its air pollution control system in May
24 of 2007, and the company continued operating for weeks without
25 proper equipment. As a result, approximately 4.4 tons of toxic
26 particulate matter were released into the air, and migrated to bay
27 waters and the community of Wilmington, putting local residents
28 and the environment at risk.

29 (j) In January 2012, the Redwood City, California, metal
30 shredding location of Sims Metal Management was cited by the
31 United States Environmental Protection Agency for polluting the
32 San Francisco Bay. Inspectors found the company had unlawfully
33 discharged polychlorinated biphenyls, lead, copper, mercury, and
34 zinc into Redwood Creek, a tributary of San Francisco Bay. The
35 United States Environmental Protection Agency found
36 polychlorinated biphenyl at levels of 195 times of the accepted
37 levels and lead at levels of more than 10 times of the accepted
38 levels in sediment near where the shredding yard meets Redwood
39 Creek. This enforcement action was resolved in 2013.

1 (k) *Additionally, there have been several fires in the last several*
2 *years at the Sims Metal Management Redwood City facility that*
3 *have caused the Bay Area Air Quality Management District to ask*
4 *residents to stay inside. Two fires occurred in November and*
5 *December of 2013, raising concerns about the proximity of this*
6 *facility to residents. In the fire in December of 2013, no one was*
7 *reported injured by the smoke or fire, which was limited to a debris*
8 *pile about 900 square feet in area and 30 feet tall, but the noxious*
9 *odor produced by the blaze was detected as far south as South San*
10 *Jose and across the San Francisco Bay in Oakland and Berkeley.*

11 (l) *Sims Metal Management's recycling facilities in Hayward*
12 *and San Francisco experienced fires in 2009 and 2010,*
13 *respectively, according to records from the Bay Area Air Quality*
14 *Management District.*

15 (m) *In 2011, the United States Fish and Wildlife Service*
16 *investigated Sims Metal Management for allowing fibrous*
17 *automobile shredder residue to blow or drift into wetlands around*
18 *Bair Island, 800 feet downwind from the Redwood City facility.*

19 (n) *DTSC has failed to revoke the nonhazardous waste*
20 *classifications for treated shredder waste granted decades ago to*
21 *the metal shredding industry despite a 2001 legal opinion by DTSC*
22 *attorneys, which called the exemption "outdated and legally*
23 *incorrect," and warnings from the department's scientists that*
24 *this waste could become hazardous during the shredding process.*

25 (o) *It is the intent of the Legislature that the conditional*
26 *nonhazardous waste classifications be revoked and that metal*
27 *shredding facilities be thoroughly regulated to ensure adequate*
28 *protection of the human health and the environment.*

29 **SECTION 1.**

30 SEC. 2. Section 25150.9 is added to the Health and Safety
31 Code, to read:

32 25150.9. (a) The Legislature finds and declares that this section
33 is intended to address the unique circumstances associated with
34 the operation of metal shredding facilities, and the generation and
35 management of wastes generated by metal shredding facilities.
36 The Legislature further declares that this section does not set a
37 precedent applicable to the management, including disposal, of
38 other hazardous wastes.

39 (b) For purposes of this section, ~~the following definitions shall~~
40 ~~apply:~~

1 (1) ~~“Metal shredder aggregate” means the combination of ferrous~~
2 ~~metal, nonferrous metal, other recyclable materials, and~~
3 ~~nonrecyclable materials that exits from a metal shredding facility.~~

4 (2) ~~“Metal shredder residue” means the predominantly~~
5 ~~nonmetallic material that remains after conducting physical~~
6 ~~separation methods to separate any ferrous or nonferrous metals,~~
7 ~~or any other recyclable materials, from the materials created by a~~
8 ~~metal shredding facility. Metal shredder residue does not include~~
9 ~~the ferrous and nonferrous metals and other recyclable materials~~
10 ~~that have been removed from the metal shredder aggregate.~~

11 (3) ~~“Metal “metal shredding facility” means an operation that~~
12 ~~uses a shredding technique to process end-of-life vehicles, waste~~
13 ~~appliances, and other forms of scrap metal to facilitate the~~
14 ~~separation and sorting of ferrous metals, nonferrous metals, and~~
15 ~~other recyclable materials from nonrecyclable materials that are~~
16 ~~components of the end-of-life vehicles, waste appliances, and other~~
17 ~~forms of scrap metal *objects containing material to be discarded.*~~
18 ~~“Metal shredding facility” does not include a feeder yard, a metal~~
19 ~~crusher, or a metal baler.~~

20 (4) ~~“Scrap metal” includes ferrous metals, nonferrous metals,~~
21 ~~aluminum scrap, other metals, and auto bodies, but does not include~~
22 ~~aluminum cans, steel cans, or bimetal cans.~~

23 (5) ~~“Treated metal shredder residue” means metal shredder~~
24 ~~residue that has been chemically treated to alter its chemical~~
25 ~~characteristics for purposes of rendering the metal shredder residue~~
26 ~~less hazardous or nonhazardous for purposes of classifying the~~
27 ~~waste in accordance with the criteria and guidelines adopted by~~
28 ~~the department pursuant to Section 25141.~~

29 (c) The department, in consultation with the Department of
30 Resources Recycling and ~~Recovery~~ *and Recovery*, the State Water
31 Resources Control Board, *and affected local air quality*
32 *management districts*, may adopt regulations establishing
33 management standards for metal shredding facilities ~~and for the~~
34 ~~generation, storage, transportation, and disposal of metal shredder~~
35 ~~residue or treated metal shredder residue *for hazardous waste*~~
36 ~~*management activities within the department’s jurisdiction* as an~~
37 ~~alternative to the requirements specified in this chapter and the~~
38 ~~regulations adopted pursuant to this chapter, if the department does~~
39 ~~all of the following:~~

1 (1) Prepares an analysis of the activities to which the *alternative*
2 management standards will apply pursuant to subdivision (d). The
3 department shall first prepare the analysis as a preliminary analysis
4 and make it available to the public at the same time that the
5 department gives notice, pursuant to Section 11346.4 of the
6 Government Code, that it proposes to adopt the alternative
7 management standards. The department shall include in the notice
8 a statement that the department has prepared a preliminary analysis
9 and a statement concerning where a copy of the preliminary
10 analysis can be obtained. The information in the preliminary
11 analysis shall be updated and the department shall make the
12 analysis available to the public as a final analysis not less than 10
13 working days before the date that the regulation is adopted.

14 (2) Demonstrates at least one of the conclusions set forth in
15 paragraphs (1) to (4), inclusive, of subdivision (e).

16 (3) Imposes, as may be necessary, conditions and limitations
17 as part of the *alternative* management standards that ensure that
18 the hazardous waste management activity to which the *alternative*
19 management standards will apply will not pose a significant
20 potential hazard to human health or safety or to the environment.

21 (d) Before the department gives notice of a proposal to adopt
22 the *alternative* management standards pursuant to subdivision (c),
23 and before the department adopts the regulation, the department
24 shall *evaluate the operative environmental and public health*
25 *regulatory oversight of metal shredding facilities, identifying*
26 *activities that need to be addressed by the alternative management*
27 *standards, or other advisable regulatory or statutory changes, and*
28 *shall* evaluate the hazardous waste management activities and
29 prepare, as required by paragraph (1) of subdivision (c), an analysis
30 that addresses all of the following aspects of the activity, to the
31 extent that the *alternative* management standards can affect these
32 aspects of the activity:

33 (1) The types of hazardous waste and the estimated amounts of
34 each hazardous waste that are managed as part of the activity and
35 the hazards to human health or safety or to the environment posed
36 by reasonably foreseeable mismanagement of those hazardous
37 wastes and their hazardous constituents. The estimate of the
38 amounts of each hazardous waste that are managed as part of the
39 activity shall be based upon information reasonably available to
40 the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages each hazardous waste.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or different from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the reasonably available actual accident history associated with the activity.

(5) The types of locations where the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in Section 25227. The estimate of the number of locations where the activity may be carried out shall be based upon information reasonably available to the department.

(e) The department shall not give notice proposing the adoption of, and the department shall not adopt, a regulation pursuant to subdivision (c) unless it first demonstrates at least one of the following, *for each requirement that the alternative management standards are intended to replace*, using the information developed in the analysis prepared pursuant to subdivision (d):

(1) The requirements that the *alternative* management standards replace are not significant or important in either of the following situations:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the

1 protection provided by the requirement, or requirements, that the
2 *alternative* management standards replace.

3 (3) Conditions or limitations imposed as part of the *alternative*
4 management standards will provide protection of human health
5 and safety and the environment equivalent to the requirement, or
6 requirements, that the *alternative* management standards replace.

7 (4) Conditions or limitations imposed as part of the *alternative*
8 management standards accomplish the same regulatory purpose
9 as the requirement, or requirements, that the *alternative*
10 management standards replace, but at less cost or with greater
11 administrative convenience, and without increasing potential risks
12 to human health or safety or to the environment.

13 (f) The department shall not adopt *alternative* management
14 standards pursuant to this section if those standards are less
15 stringent than the standards that would otherwise apply under the
16 federal act.

17 (g) ~~The management standards adopted by the department~~
18 ~~pursuant to this section shall establish requirements that apply not~~
19 ~~only to the generation, management, and disposal of metal shredder~~
20 ~~residue or treated metal shredder residue, but shall apply to all~~
21 ~~activities being conducted within the boundaries of any metal~~
22 ~~shredding facility. Nothing in this subdivision the alternative~~
23 ~~management standards authorized by this section is intended to~~
24 ~~duplicate or conflict with other laws, rules, or regulations adopted~~
25 ~~by other state agencies or affected local air quality management~~
26 ~~districts. The department shall, as much as possible, align the~~
27 ~~alternative management standards with the laws, rules, and~~
28 ~~regulations of other state agencies or affected local air quality~~
29 ~~management districts.~~

30 (h) *The owner or operator of a metal shredding facility that*
31 *may be subject to the alternative management standards shall*
32 *provide to the department all information and data determined by*
33 *the department to be relevant to the evaluation and preparation*
34 *of the analysis required by paragraphs (1) to (5), inclusive, of*
35 *subdivision (d).*

36 ~~(h)~~
37 (i) The *alternative* management standards adopted by the
38 department pursuant to this section may, to the extent it is
39 consistent with the standards that would otherwise apply under
40 the federal act, allow for ~~metal shredder residue or treated metal~~

1 shredder-residue waste to be classified and managed as
2 nonhazardous waste, provided that the analysis prepared pursuant
3 to subdivision (d) demonstrates that classification and management
4 as hazardous waste is not necessary to prevent or mitigate potential
5 hazards to human health or safety or to the environment posed by
6 the metal shredder residue or treated metal shredder residue waste.

7 (i)

8 (j) (1) Notwithstanding Sections 25189.5 and 25201, metal
9 shredder residue or treated metal shredder residue waste shall be
10 disposed of in either a class I hazardous waste landfill or, if the
11 management standards adopted by the department pursuant to this
12 section result in it being classified as a nonhazardous waste, in a
13 composite-lined portion of a solid waste landfill unit that meets
14 all requirements applicable to the disposal of municipal solid waste
15 in California after October 9, 1993, and that is regulated by waste
16 discharge requirements issued pursuant to Division 7 (commencing
17 with Section 13000) of the Water Code for discharges of designated
18 waste, as defined in Section 13173 of the Water Code, or metal
19 shredder residue or treated metal shredder residue as specified by
20 the alternative management standards.

21 (2) If the alternative management standards adopted by the
22 department pursuant to this section result in metal shredder residue
23 or treated metal shredder residue waste being classified as
24 nonhazardous waste and deem it appropriate, the material may be
25 used as alternative daily cover or for beneficial reuse pursuant to
26 Section 41781.3 of the Public Resources Code and its implementing
27 regulations.

28 (3) Upon the department's final regulatory action required in
29 regard to the consideration of alternative management standards
30 pursuant to this section, the current disposal and beneficial use
31 practices determinations allowed pursuant to the hazardous waste
32 determinations issued by the department before January 1, 2014,
33 shall cease to apply.

34 (j)

35 (k) The department shall complete the analysis described in
36 paragraph (1) of subdivision (c) and subsequent regulatory action
37 before January 1, 2017. All hazardous waste determinations and
38 policies, procedures, or guidance issued by the department before
39 January 1, 2014, governing or related to the generation, treatment,
40 and management of metal shredder residue waste or treated metal

1 shredder-residue waste shall be inoperative and have no further
2 effect once the department has taken *the required* regulatory action.

3 ~~(k)~~

4 (l) The authority of the department to adopt original regulations
5 pursuant to this section shall remain in effect only until January
6 1, 2017, unless a later enacted statute, which is enacted before
7 January 1, 2017, deletes or extends that date. This subdivision does
8 not invalidate any regulation adopted pursuant to this section before
9 the expiration of the department's authority.

10 ~~(t)~~

11 (m) A regulation adopted pursuant to this section on or before
12 January 1, 2017, shall continue in force and effect after that date,
13 until repealed or revised by the department.

14 ~~SEC. 2.~~

15 SEC. 3. Section 25150.9.1 is added to the Health and Safety
16 Code, to read:

17 25150.9.1. The department is authorized to collect an annual
18 fee from all metal shredding facilities that are subject to the
19 requirements of this chapter or to the *alternative* management
20 standards adopted pursuant to Section 25150.9. The department
21 shall establish and adopt by regulation a fee schedule that is set at
22 a rate sufficient to reimburse the department's costs to implement
23 this chapter *as applicable to metal shredder facilities*. The fee
24 schedule established by the department may be updated periodically
25 as necessary and shall provide for the assessment of no more than
26 the reasonable costs of the department to implement this chapter.

27 ~~SEC. 3.~~

28 SEC. 4. Section 25150.9.2 is added to the Health and Safety
29 Code, to read:

30 25150.9.2. ~~If metal shredder residue or treated metal shredder~~
31 ~~residue waste~~ is accepted by a solid waste landfill that manages
32 and disposes of the ~~metal shredder residue or treated metal shredder~~
33 ~~residue waste~~ in accordance with the *alternative* management
34 standards adopted by the department pursuant to Section 25150.9,
35 the ~~metal shredder residue or treated metal shredder residue waste~~,
36 upon acceptance by the solid waste landfill, shall thereafter be
37 deemed to be a solid waste, and not a hazardous waste, for purposes
38 of this chapter and Section 40191 of the Public Resources Code.

1 ~~SEC. 4.~~
2 *SEC. 5.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.